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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,519	07/28/2003	Gregory A. Ehlers	68,180-004	4286
26753	7590	04/10/2006	EXAMINER	
ANDRUS, SCEALES, STARKE & SAWALL, LLP 100 EAST WISCONSIN AVENUE, SUITE 1100 MILWAUKEE, WI 53202			SHERR, CRISTINA O	
			ART UNIT	PAPER NUMBER
			3621	

DATE MAILED: 04/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

DETAILED ACTION

1. Claims 1-67 and 69-71 are pending in this case.

Election/Restrictions

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-38 and 42-67, drawn to a method and system for providing a program aimed at managing the demand of a commodity, classified in class 705, subclass 412.
 - II. Claims 39-41 and 69-71, drawn to a method and system for managing demand of electrical energy, classified in class 705, subclass 412.
3. The inventions are distinct, each from the other because of the following reasons:
4. Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because invention I includes managing the usage of a number of commodities which or may not include electrical energy as in invention II. The subcombination has separate utility such as managing the use of only electrical energy without addressing other commodities at all.
5. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

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6. Applicant is further advised that, in the event of choosing invention I, said invention I is further subject to an election of species.

7. This application contains claims directed to the following patentably distinct species:

IA. Claims 2-6 and 43-47 are directed at activating the program and measuring rate and change in rate of delivery.

IB. Claims 7 and 48-56 are directed at delivering the utility to a plurality of sites.

IC. Claims 8 is directed at allowing a customer to subscribe to the program.

ID. Claim 9 is directed at a mandatory program.

IE. Claims 10-18 are directed at delivering the commodity to a plurality of customer sites, where each customer site has a plurality of devices.

IF. Claims 19-21 and 57-59 are directed at different commodities.

IG. Claims 22-23 and 60-61 are directed at defining a plurality of programs for use under different conditions.

IH. Claims 24-25 and 62 are directed at providing a utility interface.

IJ. Claims 26-27 are directed automatically activating the program under certain conditions.

IK. Claim 28 is directed at manually activating the program.

IL. Claims 29 and 64-66 are directed at shifting demand away from a time period.

IM. Claims 30-32 are directed at managing a subset of devices in response to activation of the program.

IN. Claims 33-35 are directed at having an operator activate the program in response to a request.

IO. Claims 36 and 67 are directed at having a node for each device to be used for downloading.

8. Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, claims 1, 37, 38 and 42 are generic.

9. Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

10. Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which depend from or otherwise require all the limitations of an allowable generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species.

MPEP § 809.02(a).

11. Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the

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requirement be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

12. The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

13. Should applicant traverse on the ground that the inventions or species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the inventions or species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C.103(a) of the other invention. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cristina Owen Sherr whose telephone number is 571-272-6711. The examiner can normally be reached on 8:30-5:00 Monday through Friday.

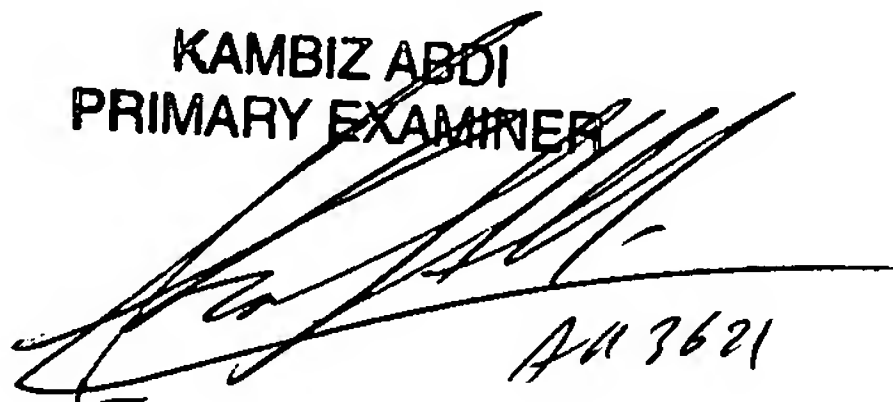
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15. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Trammell can be reached on 571-272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

16. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

COS
03/30/06

KAMBIZ ABDI
PRIMARY EXAMINER



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